BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Second Amended Accusation Against:	)	File No: 04-2003-148884
HEIDI ANN WINKLER, M.D.	)	OAH No: L-2005120180
Physician's & Surgeon's Certificate No. A 50311	)	
Respondent.	)	

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision and Order by the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on April 7, 2008 .

IT IS SO ORDERED March 7, 2008

MEDICAL BOARD OF CALIFORNIA

Barbara Yaroslavsky
Chair, Panel B

EDMUND G. BROWN JR., Attorney General
of the State of California
THOMAS S. LAZAR
Supervising Deputy Attorney General
SAMUEL K. HAMMOND, State Bar No. 141135
Deputy Attorney General
110 West "A" Street, Suite 1100
San Diego, CA 92101

P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2083
Facsimile: (619) 645-2061

Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Second Amended Accusation Against: HEIDI ANN WINKLER, M.D. 13132 Studebaker Road, Suite 7 Norwalk, CA 90650 Physician's and Surgeon's Certificate No. A50311 Respondent.	Case No. 04-2003-148884 OAH No. L-2005120180 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Barbara Johnston (Complainant) is the Executive Director of the Medical Board of California. She brought this action solely in her official capacity and is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Samuel K. Hammond, Deputy Attorney General.

2. Respondent Heidi Ann Winkler, M.D. (Respondent) is represented in this proceeding by attorney Joseph P. Furman, Esq., whose address is Curtis, Green & Furman, LLP, 9701 Wilshire Boulevard, 10th Floor, Beverly Hills, CA 90212.

3. On or about December 31, 1991, the Medical Board of California issued Physician's and Surgeon's Certificate No. A50311 to Heidi Ann Winkler, M.D. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Second Amended Accusation No. 04-2003-148884 and will expire on September 30, 2009, unless renewed.

JURISDICTION

4. Accusation No. 04-2003-148884 was filed before the Medical Board of California, Department of Consumer Affairs, State of California (Board). On July 8, 2005, a true and accurate copy of the Accusation and all other statutorily required documents were properly served on respondent, and respondent filed a timely Notice of Defense contesting the Accusation.

5. First Amended Accusation No. 04-2003-148884 which superceded Accusation No. 04-2003-148884, was filed against respondent before the Board on January 15, 2007. On January 15, 2007, a true and accurate copy of First Amended Accusation No. 04-2003-148884 was served on respondent.

6. Second Amended Accusation No. 04-2003-148884 which superceded First Amended Accusation No. 04-2003-148884, was filed against respondent before the Board on August 1, 2007, and is currently pending before the Board. On August 15, 2007, a true and accurate copy of Second Amended Accusation No. 04-2003-148884 was served on respondent. A true and accurate copy of Second Amended Accusation No. 04-2003-148884 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

7. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Second Amended Accusation No. 04-2003-148884. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

8. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own

behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

9. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

10. Respondent admits the truth of each and every charge and allegation related only to patient Saul R. as described in paragraphs 16(A) - 16(D) and 17 through 23 of Second Amended Accusation No. 04-2003-148884. Respondent also admits the truth of each and every charge in paragraphs 24 and 25 of Second Amended Accusation No. 04-2003-148884. As to all other patients named in Second Amended Accusation No. 04-2003-148884, respondent does not contest that at an administrative hearing, complainant could establish a *prima facie* case with respect to the charges and allegations related to each patient. Respondent further agrees that she has thereby subjected her Physician's and Surgeon's Certificate No. A 50311 to disciplinary action. Respondent agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

11. The Admissions made by respondent herein are only for the purpose of this proceeding, or any proceedings in which the Board or any other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

12. The parties agree that this Stipulated Settlement and Disciplinary Order shall be submitted to the Board for its consideration in the above-entitled matter and, further, that the Board shall have a reasonable period of time in which to consider and act on this Stipulated Settlement and Disciplinary Order after receiving it.

13. The parties agree that this Stipulated Settlement and Disciplinary Order shall be null and void and not binding upon the parties unless approved and adopted by the Board, except for this paragraph, which shall remain in full force and effect. Respondent fully

understands and agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and Disciplinary Order, the Board may receive oral and written communications from its staff and/or the Attorney General's office. Communications pursuant to this paragraph shall not disqualify the Board, any member thereof, and/or any other person from future participation in this or any other matter affecting or involving respondent. In the event that the Board, in its discretion, does not approve and adopt this Stipulated Settlement and Disciplinary Order, with the exception of this paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party hereto. Respondent further agrees that should the Board reject this Stipulated Settlement and Disciplinary Order for any reason, respondent will assert no claim that the Board, or any member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

ADDITIONAL PROVISIONS

14. The parties agree that, if accepted by the Board, this Stipulated Settlement and Disciplinary Order shall constitute a complete and final resolution of the charges and allegations contained in Second Amended Accusation No. 04-2003-148884.

15. This Stipulated Settlement and Disciplinary Order is intended by the parties herein to be an integrated writing representing the complete, final and exclusive embodiment of the agreements of the parties in the above-entitled matter.

16. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

17. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or opportunity to be heard by respondent, issue and enter the following Disciplinary Order:

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DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A50311 issued to respondent Heidi Ann Winkler, M.D. is revoked. However, the revocation is stayed and respondent is placed on probation for seven (7) years on the following terms and conditions.

1. CONTROLLED SUBSTANCES - PARTIAL RESTRICTION:

During the period of probation, respondent is prohibited from prescribing, dispensing, administering, possessing any Schedule I, Schedule II and Schedule III controlled substances as defined by California Uniform Controlled Substances Act (California Health and Safety Code section 11000, et seq.). This restriction does not apply to any Schedule I, Schedule II and Schedule III controlled substances possessed by respondent which are lawfully prescribed to respondent or members of her family by another practitioner for a bona fide illness or condition.

2. CONTROLLED SUBSTANCES - MAINTAIN RECORDS AND ACCESS TO RECORDS AND INVENTORIES Respondent shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered or possessed by respondent, and any recommendation or approval which enables a patient or patient's primary caregiver to possess or cultivate marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5, during probation, showing all the following: 1) the name and address of the patient; 2) the date; 3) the character and quantity of controlled substances involved; and 4) the indications and diagnoses for which the controlled substance was furnished.

Respondent shall keep these records in a separate file or ledger, in chronological order. All records and any inventories of controlled substances shall be available for immediate inspection and copying on the premises by the Board or its designee at all times during business hours and shall be retained for the entire term of probation.

Failure to maintain all records, to provide immediate access to the inventory, or to make all records available for immediate inspection and copying on the premises, is a violation of probation.

3. PRESCRIBING PRACTICES COURSE Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a course in prescribing practices, at respondent's expense, approved in advance by the Board or its designee. Failure to successfully complete the course during the first 6 months of probation is a violation of probation.

A prescribing practices course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

4. MEDICAL RECORD KEEPING COURSE Within 60 calendar days of the effective date of this decision, respondent shall enroll in a course in medical record keeping, at respondent's expense, approved in advance by the Board or its designee. Failure to successfully complete the course during the first 6 months of probation is a violation of probation.

A medical record keeping course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

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5. ETHICS COURSE Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a course in ethics, at respondent's expense, approved in advance by the Board or its designee. Failure to successfully complete the course during the first year of probation is a violation of probation.

An ethics course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

6. CLINICAL TRAINING PROGRAM Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a clinical training or educational program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California - San Diego School of Medicine ("Program").

The Program shall consist of a Comprehensive Assessment program comprised of a two-day assessment of respondent's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to respondent's specialty or sub-specialty, and at minimum, a 40 hour program of clinical education in the area of practice in which respondent was alleged to be deficient and which takes into account data obtained from the assessment, Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. Respondent shall pay all expenses associated with the clinical training program.

Based on respondent's performance and test results in the assessment and clinical education, the Program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, treatment for any medical condition, treatment for any psychological condition, or anything else affecting respondent's

practice of medicine. Respondent shall comply with Program recommendations.

At the completion of any additional educational or clinical training, respondent shall submit to and pass an examination. The Program's determination whether or not respondent passed the examination or successfully completed the Program shall be binding.

Respondent shall complete the Program not later than six months after respondent's initial enrollment unless the Board or its designee agrees in writing to a later time for completion.

Failure to participate in and complete successfully all phases of the clinical training program outlined above is a violation of probation.

If respondent fails to complete the clinical training program within the designated time period, respondent shall cease the practice of medicine within 72 hours after being notified by the Board or its designee that respondent failed to complete the clinical training program.

Failure to participate in and complete successfully the professional enhancement program outlined above is a violation of probation.

7. MEDICAL EVALUATION AND TREATMENT Within 30 calendar days of the effective date of this Decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall undergo a medical evaluation by a Board-appointed physician who shall consider any information provided by the Board or designee, and any other information the evaluating physician deems relevant, and shall furnish a medical report to the Board or its designee.

Following the evaluation, respondent shall comply with all restrictions or conditions recommended by the evaluating physician within 15 calendar days after being notified by the Board or its designee.

If respondent is required by the Board or its designee to undergo medical treatment, respondent shall, within 30 calendar days of the requirement notice, submit to the Board or its designee for prior approval the name and qualifications of a treating physician of respondent's choice. Upon approval of the treating physician, respondent shall within 15 calendar days undertake medical treatment and shall continue such treatment until further notice

from the Board or its designee.

The treating physician shall consider any information provided by the Board or its designee or any other information the treating physician may deem pertinent prior to commencement of treatment. Respondent shall have the treating physician submit quarterly reports to the Board or its designee indicating whether or not the respondent is capable of practicing medicine safely. Respondent shall provide the Board or its designee with any and all medical records pertaining to treatment that the Board or its designee deems necessary.

If, prior to the completion of probation, respondent is found to be physically incapable of resuming the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over respondent's license, and the period of probation shall be extended until the Board determines that respondent is physically capable of resuming the practice of medicine without restrictions. Respondent shall pay the cost of the medical evaluation(s) and treatment.

Failure to undergo and continue medical treatment or comply with the required additional conditions or restrictions is a violation of probation.

8. MONITORING - PRACTICE Within 30 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval as a practice monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including, but not limited to, any form of bartering, shall be in respondent's field of practice, and must agree to serve as respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision and Second Amended Accusation, and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision, Second Amended Accusation, and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision and the Second

Amended Accusation, fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours, and shall retain the records for the entire term of probation.

The monitor shall submit a quarterly written report to the Board or its designee which includes an evaluation of respondent's performance, indicating whether respondent's practices are within the standards of practice of medicine or billing, or both, and whether respondent is practicing medicine safely, billing appropriately or both.

It shall be the sole responsibility of respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If respondent fails to obtain approval of a replacement monitor within 60 days of the resignation or unavailability of the monitor, respondent shall be suspended from the practice of medicine until a replacement monitor is approved and prepared to assume immediate monitoring responsibility. Respondent shall cease the practice of medicine within 3 calendar days after being so notified by the Board or designee.

In lieu of a monitor, respondent may participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement

program at respondent's expense during the term of probation.

Failure to maintain all records, or to make all appropriate records available for immediate inspection and copying on the premises, or to comply with this condition as outlined above is a violation of probation.

9. PROHIBITED PRACTICE During probation, respondent is prohibited from providing care, treatment or management to any patient with chronic pain or to any patient experiencing "intractable pain" as defined in Business and Professions Code section 2241.5. After the effective date of this Decision, the first time that a patient seeking the prohibited services makes an appointment, respondent shall orally notify the patient that respondent does not provide care, treatment or management to patients with chronic or intractable pain. Respondent shall maintain a log of all patients to whom the required oral notification was made. The log shall contain the: 1) patient's name, address and phone number; 2) patient's medical record number, if available; 3) the full name of the person making the notification; 4) the date the notification was made; and 5) a description of the notification given. Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the log for the entire term of probation. Failure to maintain a log as defined in the section, or to make the log available for immediate inspection and copying on the premises during business hours is a violation of probation.

In addition to the required oral notification, after the effective date of this Decision, the first time that a patient who seeks the prohibited services presents to respondent, respondent shall provide a written notification to the patient stating that respondent does not provide care, treatment or management to patients with chronic or intractable pain. Respondent shall maintain a copy of the written notification in the patient's file, shall make the notification available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the notification for the entire term of probation. Failure to maintain the written notification as defined in the section, or to make the notification available for immediate inspection and copying on the premises during business

hours is a violation of probation.

10. NOTIFICATION Prior to engaging in the practice of medicine, the respondent shall provide a true copy of the Decision and Second Amended Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

11. SUPERVISION OF PHYSICIAN ASSISTANTS During probation, respondent is prohibited from supervising physician assistants.

12. OBEY ALL LAWS Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California, and remain in full compliance with any court ordered criminal probation, payments and other orders.

13. QUARTERLY DECLARATIONS Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation. Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

14. PROBATION UNIT COMPLIANCE Respondent shall comply with the Board's probation unit. Respondent shall, at all times, keep the Board informed of respondent's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

Respondent shall not engage in the practice of medicine in respondent's place of residence. Respondent shall maintain a current and renewed California physician's and

surgeon's license.

Respondent shall immediately inform the Board, or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than 30 calendar days.

15. INTERVIEW WITH THE BOARD OR ITS DESIGNEE Respondent shall be available in person for interviews either at respondent's place of business or at the probation unit office, with the Board or its designee, upon request at various intervals, and either with or without prior notice throughout the term of probation.

16. RESIDING OR PRACTICING OUT-OF-STATE In the event respondent should leave the State of California to reside or to practice, respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding 30 calendar days in which respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

All time spent in an intensive training program outside the State of California which has been approved by the Board or its designee shall be considered as time spent in the practice of medicine within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; Probation Unit Compliance; and Cost Recovery.

Respondent's license shall be automatically canceled if respondent's periods of temporary or permanent residence or practice outside California total two years. However, respondent's license shall not be canceled as long as respondent is residing and practicing medicine in another state of the United States and is on active probation with the medical licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

17. FAILURE TO PRACTICE MEDICINE - CALIFORNIA RESIDENT

In the event respondent resides in the State of California and for any reason respondent stops practicing medicine in California, respondent shall notify the Board or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve respondent of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding 30 calendar days in which respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

All time spent in an intensive training program which has been approved by the Board or its designee shall be considered time spent in the practice of medicine. For purposes of this condition, non-practice due to a Board-ordered suspension or in compliance with any other condition of probation, shall not be considered a period of non-practice.

Respondent's license shall be automatically canceled if respondent resides in California and for a total of two years, fails to engage in California in any of the activities described in Business and Professions Code sections 2051 and 2052.

18. COMPLETION OF PROBATION Respondent shall comply with all financial obligations (e.g., cost recovery, restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, respondent's certificate shall be fully restored.

19. VIOLATION OF PROBATION Failure to fully comply with any term or condition of probation is a violation of probation. If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, Petition to Revoke Probation, or an Interim Suspension Order is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

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20. LICENSE SURRENDER Following the effective date of this Decision, if respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request the voluntary surrender of respondent's license. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the Board or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation and the surrender of respondent's license shall be deemed disciplinary action. If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

21. PROBATION MONITORING COSTS Respondent shall pay the costs associated with probation monitoring each and every year of probation which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Joseph P. Furman, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Medical Quality, Medical Board of California, Department of Consumer Affairs, State of California.

DATED: 1-24-08

Heidi Ann Winkler MD

HEIDI ANN WINKLER, M.D.
Respondent

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I have read and fully discussed with respondent Heidi Ann Winkler, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: JAN. 24, 2008

JOSEPH P. FURMAN, ESQ.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Medical Quality, Medical Board of California, Department of Consumer Affairs, State of California.

DATED: 1/24/08

EDMUND G. BROWN JR., Attorney General
of the State of California

THOMAS S. LAZAR
Supervising Deputy Attorney General

SAMUEL K. HAMMOND
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: SD2005700419
80199501.wpd

Exhibit A

Second Amended Accusation No. 04-2003-148884

EDMUND G. BROWN JR., Attorney General
of the State of California
THOMAS S. LAZAR
Supervising Deputy Attorney General
SAMUEL K. HAMMOND, State Bar No. 141135
Deputy Attorney General
California Department of Justice
110 West "A" Street, Suite 1100
San Diego, California 92101
P.O. Box 85266
San Diego, California 92186-5266
Telephone: (619) 645-2083
Facsimile: (619) 645-2061

Attorneys for Complainant

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Second Amended Accusation Against: **HEIDI ANN WINKLER, M.D.** 13132 Studebaker Road, Suite 7 Norwalk, CA 90650 Physician's and Surgeon's Certificate No. A 50311 Respondent.	Case No. 04-2003-148884 OAH No. L-2005120180 **SECOND AMENDED ACCUSATION** (Cal. Gov. Code, § 11503)

Complainant David T. Thornton, as causes for disciplinary action, alleges:

PARTIES

1. Complainant is the Executive Director of the Medical Board of California, Department of Consumer Affairs, State of California (hereinafter the "Board"), and makes and files this Second Amended Accusation solely in his official capacity.

2. At all times mentioned herein, Heidi Ann Winkler, M.D., (hereinafter "Respondent") has been licensed by the Board under Physician's and Surgeon's Certificate No. A 50311. Said certificate was issued by the Board on December 31, 1991, and will expire on September 30, 2007, unless renewed.

JURISDICTION

3. This Second Amended Accusation which supercedes Accusation No.04-2003-148884 and First Amended Accusation No. 04-2003-148884, is brought before the Division of Medical Quality ("Division") of the Medical Board of California under the authority of the following laws. [1]

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Division deems proper.

5. Section 2234 of the Code provides that the Division of Medical Quality shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter [Chapter 5, the Medical Practice Act].

"(b) Gross negligence.

"(c) Repeated negligent acts.

"(d) Incompetence.

"(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

"(f) Any action or conduct which would have warranted the denial of a certificate.

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1. All section references are to the California Business and Professions Code ("Code") unless otherwise indicated.

6. Unprofessional conduct under California Business and Professions Code section 2234 is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine.[2]

7. Section 725 provides, in pertinent part, that repeated acts of clearly excessive prescribing or administering of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of the community of licensees is unprofessional conduct.

8. Section 2236 provides, in pertinent part, that the conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. A plea or verdict of guilty, or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section.

9. Section 2237 provides, in pertinent part, that the conviction of a charge of violating any federal statutes or regulations or any statute or regulation of this state, regulating dangerous drugs or controlled substances, constitutes unprofessional conduct. The record of conviction is conclusive evidence of such unprofessional conduct. A plea or verdict of guilty, or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section.

10. Section 2238 provides that a violation of any federal statute or federal regulation or any statutes or regulations of this state regulating dangerous drugs or controlled substance constitutes unprofessional conduct.

11. Section 2241 provides, in pertinent part, that the prescribing, selling, giving away or administering controlled substance or dangerous drugs to an addict or habitue constitutes unprofessional conduct.

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2. *Shea v. Board of Medical Quality Assurance* (1978) 81 Cal.App.3d 564, 575.

12. Section 2242, subdivision (a) provides that prescribing, dispensing, or furnishing dangerous drugs as defined in section 4022 without an appropriate prior examination and a medical indication, constitutes unprofessional conduct.

13. Section 2266 of the Code provides that the failure of the physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct.

14. Health and Safety Code section 11153 provides, in pertinent part, that a prescription for a controlled substance shall only be issued for a legitimate purpose by an individual acting in the usual course of his or her profession. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. Except as authorized by the division, the following are not legal prescriptions: (1) an order purporting to be a prescription which is issued not in the usual course of professional treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of controlled substances, which is issued not in the course of professional treatment or as part of an authorized narcotic treatment program, for the purpose of providing the user with controlled substances, sufficient to keep him or her comfortable by maintaining customary use. Any person who knowingly violates this section shall be punished by imprisonment in the state prison or in the county jail not exceeding one year, or by a fine not exceeding twenty thousand dollars ($20,000), or by both a fine and imprisonment.

FIRST CAUSE FOR DISCIPLINARY ACTION

(Gross Negligence)

15. Respondent has subjected her Physician's and Surgeon's Certificate No. A 50311 to disciplinary action under sections 2227 and 2234 as defined by 2234, subdivision (b) of the Code, in that she has committed gross negligence in her care and treatment of patients Saul R., Lorraine S., Savannah B., Jonathan B., Marilyn P., Stephen P., Elaine L., Regina B., David B., Mark S., Debbera S., Tom L., Carl G. and Steven V. The circumstances are as follows:

A. INTRODUCTION

In about February 2006, the Board received information indicating respondent was prescribing controlled substances and dangerous drugs to patient Lorraine S. who was having the prescriptions filled and selling the drugs on the "streets." In the course of its investigation, the Board obtained a Controlled Substances Utilization Review and Evaluation System (CURES) Report which indicated respondent had been prescribing unusually large amounts of controlled substances and dangerous drugs to several of her patients. An undercover operation was performed at respondent's offices to establish respondent's routine controlled substances prescribing habit. A search warrant was issued for the seizure of medical records of specific patients including the above-named patients. On or about June 29, 2006, the search warrant was executed on respondent's offices located at 13132 Studebaker Road, Suite 7, Norwalk, CA 90650. Documents obtained pursuant to the search warrant resulted in the allegations related to all patients named in this pleading, except patient Steven V.

B. Patient Saul R.

On or about April 26, 2006, patient Saul R., a Board's investigator operating undercover, went to respondent's offices with a complaint of a problem with his arm. Saul R. completed a "patient information form" and was escorted to the examination room. About 20 minutes later, respondent entered the examination room. Respondent asked Saul R. if he had a problem with his arm and Saul R. said he did not but wanted Vicodin.[3] Respondent asked why he wanted Vicodin and Saul R. replied that Vicodin helped him "to cope" and to "feel more better." In response to respondent's questioning, Saul R. told respondent he was not having any pain at the time and had not had any pain for a long time. Respondent stated: "Well, I have to put something down here." Respondent then asked whether Saul R. was obtaining the Vicodin for someone

3. Vicodin, hydrocodone bitartrate and acetaminophen, are Schedule III controlled substances under Health and Safety Code section 11056(e)(3). It comes in regular strength and extra strength (ES). It is indicated for relief of moderate to moderately severe pain.

else, and Saul R. replied the Vicodin was for his own use. Upon further questioning, Saul R. stated he was not addicted to Vicodin and that he normally ingested "two or three" tablets a day. Respondent then asked Saul R.: "Are you from the DEA or something?" Saul R. responded: "Do I look like it?" Respondent said: "I don't know they probably send people out here to make sure I write it right." Respondent asked whether Saul R. had any injuries and whether he was addicted to Vicodin. Saul R. responded "No" to both questions. Respondent than asked whether the Vicodin was for someone else and Saul R. replied it was for his own use. Respondent warned Saul R. that Vicodin could be addicting and could cause liver problems. Respondent wrote a prescription for 90 tablets of Vicodin.

On or about May 16, 2006, Saul R. made another visit to respondent's clinic. After his vital signs were obtained, he informed the medical assistant he was making a follow-up visit for the numbness in his arm. He was escorted to the waiting room and after about 45 minutes, respondent entered into the room. Respondent asked Saul R. if he had any numbness in his arm as she reviewed the chart. Saul R. told respondent he did not have any numbness in his arm but he wanted a refill of Vicodin. Saul R. told respondent he had no pain and that the Vicodin respondent prescribed on the last office visit helped him because it made him feel better. Respondent checked Saul R.'s ears, listened to his heart and checked his throat. She then asked Saul R. if he wanted Vicodin "500" or "750" and Saul R. replied "750." Respondent then wrote a prescription for 90 tablets of Vicodin ES for Saul R.

C. Patient Lorraine S.

Beginning from about March 1998 and continuing on to about April 2006, respondent provided services as a primary care physician to this patient Lorraine S.[4] Patient Lorraine S.'s medical history included liver cancer, chronic hepatitis C, blurred vision, chronic bronchitis, diabetes mellitus, rheumatoid arthritis, asthma and prescription

4. Statements pertaining to treatment respondent provided to this patient prior to 2000 are informational only. Respondent's conduct prior to 2000 is not a basis for discipline.

drug abuse. During 1998 and 1999, the patient Lorraine S. made approximately 25 office visits with complaints that included pelvic pain, asthma, pharyngitis and bronchitis. In 2000, patient Lorraine S. made approximately 6 visits. On the visit on or about June 30, 2000, respondent noted patient Lorraine S. had a history of abusing prescription drug use. She ordered drug screening for the patient. According to respondent's chart, patient Lorraine S. made approximately 5 office visits in 2001 and 2 office visits in 2002. On or about July 27, 2001, respondent admitted patient Lorraine S. to the hospital upon the patient's complaint of blurry vision. During this hospitalization, respondent noted patient Lorraine S. had a history of cocaine use. Respondent prescribed Vicodin for patient Lorraine S. on the visits on or about June 27, 2002 and September 12, 2002.

During 2003, the patient Lorraine S. made monthly visits to respondent's offices. Respondent's diagnosis for the patient on most of these visits included arthritis, hepatitis C and lower back pain. On nearly every visit, respondent prescribed a combination of 60 tablets of Vicodin and 60 tablets of Soma for patient Lorraine S.[5] During this period, respondent repeatedly prescribed Vicodin and Soma for patient Lorraine S. without obtaining and documenting a history of the patient's pain. During this period, respondent ordered three "drug screens" of patient Lorraine S. on or about January 23, 2003, on or about April 9, 2003 and on or about September 8, 2003. The drug screens were "negative for opiates" in spite of the Vicodin respondent was regularly prescribing for patient Lorraine S. Respondent continued prescribing controlled substances and other dangerous drugs to patient Lorraine S. despite the clear evidence that the patient was "diverting" the drugs she obtained from respondent.

During 2004, patient Lorraine S. made approximately 24 office visits. Respondent's diagnosis for patient Lorraine S. on most of these visits included arthritis, hip pain and hepatitis C. On all these visits, respondent wrote prescriptions for drugs that included 60 tablets of Vicodin and 60 tablets of Soma for patient Lorraine S. Respondent

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5. Soma is the trade name for Carisoprodol and is a dangerous drug under Code section 4022. It is indicated for the relief of pain and discomfort associated with acute musculoskeletal conditions.

prescribed these medications without obtaining and documenting a history of the patient's pain, and without performing and documenting a physical examination that would include an assessment of the patient's pain. On patient Lorraine S.'s visits on or about January 21, 2004, February 3 and 24, March 18, respondent wrote prescriptions for Vicodin and Soma for the patient. On the visits on or about April 5, 21 and 30, May 19 and 27, June 7, 17 and 25, and July 16, 20 and 24, 2004, respondent wrote prescriptions for Vicodin ES and Soma for patient Lorraine S. On the visits of August 10 and 19, 2004, respondent prescribed Vicodin ES and Soma but on the visit of August 31, 2004, respondent prescribed Vicodin ES and Ativan.[6] On the visit of September 9, 2004, respondent prescribed Vicodin ES and Soma, however on the visits of September 28, October 7, November 15 and December 6, 2004, respondent prescribed Vicodin ES, Soma and 60 tablets of Tylenol #3 for patient Lorraine S.[7] On or about February 24, 2004, respondent ordered a drug screen on the patient. The drug screen was "negative for opiates" in spite of the regular prescription respondent was writing for patient Lorraine S.

During 2005, patient Lorraine S. made approximately 17 office visits. Respondent's diagnosis for patient Lorraine S. during this period included arthritis and hepatitis C. During this period, there was an increase in the variety and quantity of controlled substances and dangerous drugs respondent prescribed for patient Lorraine S. Respondent prescribed these medications without obtaining and documenting a history of the patient's pain. On the visit on or about January 4, 2005, respondent prescribed 60 tablets of Vicodin ES, 60 tablets of Soma and Tylenol with Codeine (quantity not noted), and on the visit of about January 19, 2005, respondent prescribed 60 tablets each of Vicodin and Soma. On the visit of about February 3, 2005, respondent prescribed 50

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6. Ativan, a brand name for Lorazepam, is a Schedule IV controlled substance under Health and Safety Code section 11057, subdivision (d)(19). It is indicated for the management of anxiety disorders or short-term relief of symptoms of anxiety or anxiety associated with depressive symptoms.

7. Tylenol #3, acetaminophen and codeine, is a Schedule III controlled substance under Health and Safety Code section 11056, subdivision (e)(3). In is indicated for treatment of moderate to severe pain.

tablets of Tylenol with Codeine in addition to the 60 tablets of Vicodin ES., and on the visit of about February 24, 2005, respondent prescribed Valium 5 mg.[8] On the visits of about March 14 and April 21, 2005, respondent prescribed Tylenol with Codeine, Vicodin ES, Valium and Soma. Respondent ordered a refill of the patient's Tylenol with Codeine on the visit of about May 5, 2005, but prescribed 60 tablets each of Valium, Vicodin ES and Soma, and Tylenol with Codeine (quantity no noted) on the visit on or about May 19, 2005. On the visit on or about June 2, 2005, respondent prescribed 120 tablets each of Vicodin ES and Soma, and respondent prescribed 60 tablets of Tylenol #3 on the visit on or about June 16, 2005.

On the visit on or about August 1, 2005, respondent prescribed 120 tablets each of Tylenol with Codeine, Vicodin and Soma, and on or about August 13, 2005, respondent prescribed 120 tablets of Vicodin ES, 60 tablets of Valium and Tylenol #3 (quantity not noted). On the visit on or about October 3, 2005, respondent prescribed 120 tablets each of Vicodin and Soma and 60 tablets of Valium, and on the visit of about October 26, 2005, respondent ordered a refill Soma and Valium drugs. On the visit on or about November 18, 2005, respondent prescribed 90 tablets of Vicodin ES, 60 tablets each of Valium and Soma. On the visit on or about December 5, 2005, respondent prescribed 90 tablets of Vicodin ES, 60 tablets each of Valium and Soma, and on the visit on or about December 27, 2005, respondent prescribed 120 Vicodin ES and 60 tablets each of Valium and Soma. On or about March 14, 2005 and December 5, 2005, respondent ordered drug screens on patient Lorraine S. The result of the drug screens showed no evidence of opiates in the patient's blood in spite of the numerous prescriptions for controlled substances respondent was writing for the patient.

Respondent continued to prescribe controlled substances and dangerous drugs to patient Lorraine S. during visits in 2006. On patient Lorraine S.'s visit on or

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8. Valium, a brand name for Diazepam, is a Schedule IV controlled substance under Health and Safety Code section 11057, subdivision (d)(7). It is indicated for relief of anxiety disorders or short-term relief of anxiety.

about February 9, 2006, respondent prescribed 100 tablets of Vicodin ES, 120 tablets of Soma and ordered a refill of Xanax (quantity not noted);[9] on the visit on or about March 2, 2006, respondent ordered a refill of the patient's Soma and Valium and prescribed Vicodin ES (quantity not noted); on the visit on or about March 21 2006, respondent prescribed 120 tablets of Vicodin and Soma (quantity not noted); and on the visit on or about April 10, 2006, respondent ordered a refill of the patient's Vicodin ES, Soma and Valium.

Respondent prescribed controlled substances and dangerous drugs to patient Lorraine S. over a long period of time without obtaining and documenting a history of the patient's pain, and without performing and documenting a physical examination that would include an assessment of the patient's pain and an assessment of patient's physical and psychologic functioning. Respondent also failed to perform and note periodic reviews of the effectiveness of the medications she was prescribing for the patient, failed to establish a written treatment plan for the patient, failed to obtain and note the patient's informed consent for the prolonged treatment with narcotics, and failed to discuss and/or note she discussed other pain treatment modalities with the patient. Respondent continued prescribing controlled substances and other dangerous drugs to patient Lorraine S. despite the clear evidence that the patient was "diverting" the drugs she obtained from respondent.

D. Carl G.[10]

On or about February 3, 2004, patient Carl G. made a visit to respondent's offices with a request for a "check up" of his left ankle and "refill" of his medications. Respondent's diagnosis for patient Carl G. was "Lt ankle surgery." Respondent prescribed 100 tablets of Vicodin ES and 60 tablets of Soma 350 mg. Thereafter, beginning in about September 2004 and continuing to about April 2006, patient Carl G.

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9. Xanax, a brand of Alprazolam, is a Schedule IV controlled substance under Health and Safety Code section 11057, subdivision (d)(1). It is indicated for management of anxiety disorder.

10. This patient is the boyfriend of patient Lorraine S.

made nearly biweekly visits to respondent's offices. On most of these visits the patient's complaints included "more meds" and "refill" of meds. Respondent's diagnosis for patient Carl G. during this period included left ankle injury and arthritis. Respondent prescribed Vicodin ES and Soma for patient Carl G. on nearly every visit. In the year 2005 alone, respondent prescribed approximately1160 tablets of Vicodin ES and 1132 tablets of Soma 350 mg. for patient Carl G.

Respondent prescribed large amounts of controlled substances to patient Carl G. without obtaining and documenting a history of the patient's pain, and without performing and documenting a physical examination that would include an assessment of the patient's left ankle injury and assessment of patient's physical and psychologic functioning. Respondent also failed to establish a written treatment plan for treatment of the Carl G.'s ankle pain, failed to obtain and note the patient's informed consent for the prolonged treatment with narcotics, failed to discuss and/or note she discussed other pain treatment modalities with the patient. In spite of the large quantity of controlled substances the patient was receiving, respondent failed to take and/or note any steps she took to determine whether the patient was addicted to drugs. Respondent also failed to take and note any steps she took to determine whether the patient was abusing prescription medications. Respondent also failed to initiate and/or note she initiated an inquiry into whether the patient was diverting the drugs.

E. Patient Debbera S.[11]

On or about March 25, 2005, patient Debbera S., then 45 years old, made a visit to respondent's offices with complaints of sore throat, cough, headache, neck ache and back ache. Respondent's diagnosis on this date included "low back pain/spasm" and she referred patient Debbera S. to a physical therapist. Patient Debbera S.'s next visit was on or about June 6, 2005. On this visit, respondent noted the patient's chief complaint to be a request for "more med" and she also noted the patient was on Prozac.

11. This patient is the spouse of patient Mark S.

Respondent's diagnosis included lower back pain. Respondent prescribed 40 tablets of Vicodin for the patient, among other medications. On or about June 13, 2005, patient Debbera S. made another visit requesting "more med." Respondent's prescription for the patient on this date included 40 tablets of Vicodin. On or about July 1, 2005, patient Debbera S. made a visit complaining of back pain from an automobile accident. Respondent prescribed 40 tablets of Vicodin ES as well as Motrin 800 mg and Prozac 40 mg. for the patient. On or about July 8, 2005, the patient made a return visit complaining of back pain and "more med." Respondent wrote a prescription that included 60 tablets of Vicodin ES for patient Debbera S.

On or about August 4, 2005, respondent's prescription for the patient included 60 tablets of Vicodin ES and 30 tablets of Xanax. On the visits on or about August 30, September 13, October 10, October 31, November 10, December 2, December 12, December 27, 2005, respondent's prescription for patient Debbera S. included 60 tablets of Vicodin ES. Between about January and March 2006, patient Debbera S. made approximately six visits. On all six visits, respondent either prescribed 60 tablets of Vicodin ES, and on three of the visits, respondent prescribed 30 tablets of Xanax in addition to the Vicodin ES for patient Debbera S.

Respondent prescribed these medications to patient Debbera S. without obtaining and documenting a history of the patient's pain, and without performing and documenting a physical examination that would include an assessment of the patient Debbera S.'s pain and an assessment of patient's physical and psychologic functioning. Respondent also failed to establish a written treatment plan for the patient, failed to obtain and note the patient Debbera S.'s informed consent for the prolonged treatment with narcotics, failed to discuss and/or note she discussed other pain treatment modalities with the patient. Despite the large quantity of controlled substances patient Debbera S. was receiving, respondent failed to take any steps to determine whether the patient was addicted to drugs and failed to determine whether the patient was abusing prescription

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medications. Respondent also failed to initiate an inquiry into whether the patient Debbera S. was diverting the drugs.

F. Patient Mark S.[12]

On or about August 8, 2005, patient Mark S. presented at respondent's offices. There is no notation of any complaint made by patient Mark S. on this date, however, respondent noted the patient had just recently been discharged from the hospital and was under the care of another physician for "liver problems." Respondent's diagnosis on this date included hepatitis. She prescribed 60 tablets of Vicodin ES and 60 tablets of Xanax for patient Mark S. Respondent prescribed these medications to this patient without obtaining and documenting a history of the patient's pain, and without performing and documenting a physical examination that would include an assessment of the patient's pain and an assessment of patient's physical and psychologic functioning. Respondent also failed to inquire into patient Mark S.'s history of prior pain treatment approaches or of the patient Mark S.'s drug use.

Thereafter, patient Mark S. made approximately 2 visits a month to respondent's offices. Between on or about August 23, 2005 and about March 21, 2006, patient Mark S. made approximately 19 office visits. During this period, respondent prescribed 1020 tablets of Vicodin ES and about 300 tablets of Xanax for patient Mark S. During about November 2005, patient Mark S. made 4 visits (November 4, 14, 17, and 29) and on each visit, respondent prescribed 60 tablets of Vicodin ES for the patient. In spite of the large quantity of controlled substances patient Mark S. was receiving, respondent failed to take any steps to determine whether the patient was addicted to drugs and failed to determine whether patient Mark S. was abusing prescription medications. Respondent also failed to initiate an inquiry into whether patient Mark S. was diverting the drugs.

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12. This patient is married to patient Debbera S., above.

G. Patient Marilyn P.[13]

Beginning from about January 2000 and continuing on to about June 2006, respondent provided services as a primary care physician to patient Marilyn P. Patient Marilyn P.'s medical history included asthma and chronic obstructive pulmonary disease. During about 2000 and 2003, respondent's treatment of patient Marilyn included prescriptions for Prednisone and Advair inhalers and occasional prescriptions for Vicodin. Beginning in about January 2004, respondent commenced writing prescriptions for Vicodin for patient Marilyn P. on nearly every visit. Patient Marilyn P. made approximately 17 office visits during 2004. During this period, respondent prescribed approximately 1560 tablets of Vicodin ES for the patient. Patient Marilyn P. made approximately 18 office visits during 2005. On most of these visits, there is no notation the patient complained of any pain and there is no notation of a physical examination. Respondent prescribed Vicodin ES for patient Marilyn P. on each visit prescribing approximately 1800 tablets of Vicodin ES for the patient during this period. Patient Marilyn P. made approximately 7 office visits between January and July 2006. On some of the visits, respondent noted the patient complained of chest wall pain and lower back pain. Respondent prescribed a total of approximately 700 tablets of Vicodin ES for patient Marilyn P. during this period.

Respondent prescribed these medications for patient Marilyn P. without obtaining and documenting a history of the patient's pain, and without performing and documenting a physical examination that would include an assessment of the patient's pain and an assessment of patient's physical and psychologic functioning. Respondent also failed to establish a written treatment plan for patient Marilyn P., failed to obtain and note the patient's informed consent for the prolonged treatment with narcotics, failed to discuss and/or note she discussed other pain management modalities with patient Marilyn P. In spite of the large quantity of controlled substances patient Marilyn P. was

13. This patient is the spouse of patient Stephen P.

receiving, respondent failed to take any steps to determine whether the patient was addicted to drugs and failed determine whether the patient was abusing prescription medications. Respondent also failed to initiate an inquiry into whether patient Marilyn P. was diverting the drugs.

H. Patient Stephen P.

On or about September 7, 2004, patient Stephen P. made a visit to respondent's offices. There is no notation of the patient's complaint on this visit, however, respondent diagnosed the patient with right foot trauma. Respondent's prescription for patient Stephen P. on this date included 100 tablets of Vicodin ES. Thereafter, patient Stephen P. made 3 more visits during 2004. Respondent prescribed 100 tablets of Vicodin ES for patient Stephen P. on each visit. During 2005, patient Stephen P. made approximately 15 office visits. Respondent's diagnosis for patient Stephen P. during this period included leg pain, leg trauma and ankle injury. Respondent prescribed Vicodin ES for patient Stephen P. on nearly every visit. During this period respondent prescribed a total of approximately1500 tablets of Vicodin ES for patient Stephen P. Patient Stephen P. made approximately 8 visits during February and July 2006. Respondent prescribed Vicodin ES for patient Stephen P. on each visit. During this period, respondent prescribed a total of approximately 800 tablets of Vicodin ES for the patient.

Respondent prescribed these large amounts of controlled substances for patient Stephen P. without obtaining and documenting a history of the patient's pain, and without performing and documenting a physical examination that would include an assessment of the patient's pain and an assessment of patient's physical and psychologic functioning. Respondent also failed to establish a written treatment plan for treatment of the patient Stephen P.'s leg pain and ankle injury, failed to obtain and note the patient's informed consent for the prolonged treatment with narcotics, failed to discuss and/or note she discussed other pain treatment modalities with the patient. In spite of the large quantity of controlled substances patient Stephen S. was receiving, respondent failed to

take any steps to determine whether the patient was addicted to drugs and failed to determine whether the patient was abusing prescription medications. Respondent also failed to initiate an inquiry into whether patient Stephen S. was "diverting" the drugs.

I. Patient Regina B.

On or about July 27, 2004, Regina B. made a visit to respondent's office with complaints of hypertension, depression and "multiple adhesions." On this date respondent prescribed 60 tablets of Vicodin ES for patient Regina B. and referred the patient to some specialists. On or about September 20, 2004, patient Regina B. made another visit for a "check up," right knee pain and "refills." On this date respondent's prescription for patient Regina B. included 60 tablets of Vicodin ES and Soma 350 mg. Between about January 13, 2005 and about December 21, 2005, patient Regina B. made approximately 13 office visits. Respondent's diagnosis of patient Regina B. during this period included abdominal pain, lower back pain and "adhesions." Respondent prescribed Vicodin for patient Regina B. on each visit. On each of the visits of about January 13, 19 and February 10, 2005, respondent prescribed 60 tablets of Vicodin ES for patient Regina B. During this period, respondent prescribed approximately 480 tablets of Vicodin ES for patient Regina B. Respondent also ordered a refill of the patient's Soma medication on most of these visits. Between January and April 2006, patient Regina B. made approximately 5 office visits. Respondent prescribed approximately 450 tablets of Vicodin ES for the patient during this period.

During the period respondent provided treatment to patient Regina B., the patient was being treated by another practitioner for the same conditions. This practitioner prescribed MS Contin 30 mg[14] (twice a day) and Vicodin ES (1-2 every six hours) for the patient.

Respondent prescribed large amounts of controlled substances for patient Regina B. without obtaining and documenting a history of the patient's pain, and without

14. MS Contin, Morphine Sulphate controlled release, are Schedule II controlled substances under Health and Safety Code section 11055, subdivision (m).

performing and documenting a physical examination that would include an assessment of the patient's pain and an assessment of patient's physical and psychologic functioning. Respondent also failed to establish a written treatment plan for treatment of patient Regina B.'s knee and abdominal pain, failed to obtain and note the patient's informed consent for the prolonged treatment with narcotics, failed to discuss and/or note she discussed other pain treatment modalities with the patient. In spite of the large quantity of controlled substances patient Regina B. was receiving, respondent failed to take and/or note any steps she took to determine whether the patient was addicted to drugs. Respondent also failed to take and note any steps she took to determine whether patient Regina B. was abusing prescription medications, failed to initiate and/or note she initiated an inquiry into whether patient Regina B. was diverting the drugs.

J. Patient David B.[15]

On or about February 22, 2005, patient David B. made a visit to respondent's offices with complaints of pain in the right arm, neck and fingers. Thereafter, patient David B. made approximately 19 office visits until about March 13, 2006. Respondent's diagnosis for the patient on many of these visits was right knee pain. On nearly every visit, respondent prescribed Lortab 10/500[16] and Soma for patient David B. During this period, respondent prescribed approximately 1025 tablets of Lortab 10/500 and approximately 700 tablets of Soma.

Respondent prescribed large amounts of controlled substances for patient David B. without obtaining and documenting a history of the patient's pain, and without performing and documenting a physical examination that would include an assessment of the patient's pain and assessment of patient's physical and psychologic functioning. Respondent also failed to establish a written treatment plan for treatment of patient

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15. This patient is patient Regina B.'s husband.

16. Lortab, Hydrocodone Bartartrate and acetaminophen, are Schedule III controlled substances under Health and Safety Code section 11056, subdivision (e)(3). It is indicated for relief of moderate to moderately severe pain.

David B.'s knee pain, failed to obtain and note the patient's informed consent for the prolonged treatment with narcotics, failed to discuss and/or note she discussed other pain treatment modalities with the patient. In spite of the large quantity of controlled substances patient David B. was receiving, respondent failed to take and/or note any steps she took to determine whether the patient was addicted to drugs. Respondent also failed to take and note any steps she took to determine whether patient David B. was abusing prescription medications, and failed to initiate and/or note she initiated an inquiry into whether the patient was diverting the drugs.

K. Patient Elaine L.

On or about February 16, 2005, patient Elaine L. made a visit to the respondent's offices. Patient Elaine L.'s medical history that included "lower back pain and legs pain." Respondent's diagnosis was "obesity - losing weight." Respondent's prescription for patient Elaine L. included Tylenol #4. Thereafter, patient Elaine L. made regular nearly biweekly visits until June 29, 2006. Patient Elaine L. made approximately 38 visits during this period. On most of these visits, patient Elaine L. did not complain of pain, yet respondent prescribed 120 tablets of Tylenol #4 for patient Elaine L. on each visit. During this period respondent prescribed approximately 4560 tablets of Tylenol #4 for patient Elaine L.

Respondent prescribed large amounts of controlled substances for patient Elaine L. without obtaining and documenting a history of the patient's pain, and without performing and documenting a physical examination that would include an assessment of the patient's pain and assessment of patient's physical and psychologic functioning. Respondent also failed to establish a written treatment plan for treatment of patient Elaine L.'s lower back and knee pains, failed to obtain and note the patient Elaine L.'s informed consent for the prolonged treatment with narcotics, failed to discuss and/or note she discussed other pain treatment modalities with the patient. In spite of the large quantity of controlled substances patient Elaine L. was receiving, respondent failed to take and/or note any steps she took to determine whether the patient was addicted to

drugs. Respondent also failed to take and note any steps she took to determine whether patient Elaine L. was abusing prescription medications, and failed to initiate and/or note she initiated an inquiry into whether patient Elaine L. was diverting the drugs.

L. Patient Tom L.[17]

On or about March 11, 2005, patient Tom L. made a visit to respondent's offices with a request for "a check up" and "refill" of his medication. Respondent diagnosed the patient with lower back pain and prescribed 100 tablets of Tylenol #4 for patient Tom L. Thereafter, patient Tom L. made nearly biweekly visits until about June 15, 2006. Patient Tom L. made approximately 39 visits during this period. Patient Tom L.'s complaints during these visits were "more meds" or "refills," and did not complain of pain on any of these visits. However, respondent prescribed Tylenol #4 for patient Tom L. on every visit. During this period, respondent prescribed approximately 4500 tablets of Tylenol #4 for patient Tom L. during this period.

Respondent prescribed large amounts of controlled substances to patient Tom L. without obtaining and documenting a history of the patient's pain, and without performing and documenting a physical examination that would include an assessment of the patient's pain and assessment of patient's physical and psychologic functioning. Respondent also failed to establish a written treatment plan for treatment of the patient Tom L.'s lower back pain, failed to obtain and note the patient Tom L.'s informed consent for the prolonged treatment with narcotics, failed to discuss and/or note she discussed other pain treatment modalities with the patient. In spite of the large quantity of controlled substances patient Tom L. was receiving, respondent failed to take and/or note any steps she took to determine whether the patient was addicted to drugs. Respondent also failed to take and note any steps she took to determine whether patient Tom L. was abusing prescription medications, and failed to initiate and/or note she initiated an inquiry into whether patient Tom L. was diverting the drugs.

17. This patient is married to patient Elaine L.

M. Patient Savannah B.

On or about December 30, 2000, patient Savannah B., then 11 years old, made a visit to respondent's offices. The patient's complaint included cough and fever for two days and a request for a "refill" of her Ritalin medication.[18] Patient Savannah B. was noted to be 5 feet, 1 inch and weighed 155 lbs. Respondent's assessment was "acute laryngitis" and "otitis media." Her prescription for patient Savannah B. included Ritalin 10 mg. Thereafter, patient Savannah B. made regular visits until about September 2005. On patient Savannah B.'s last visit on or about September 9, 2005, she weighed 287 lbs. Patient Savannah B. made approximately 60 office visits during the period of treatment with various complaints that included running nose, cough and "med refill." Respondent's diagnoses for patient Savannah B. included "ADHD." Respondent regularly prescribed Ritalin for patient Savannah B. during this period.

Respondent regularly prescribed Ritalin for patient Savannah B. without any documentary evidence that the patient suffered from ADHD. Respondent failed to elicit and document any evidence of the patient's ADHD from her school records, and failed to obtain psycho-social evaluation that would justify the ADHD diagnosis. Moreover, respondent failed to address patient Savannah B.'s morbid obesity, failed to counsel and/or note she counseled patient Savannah B. on her dietary habits, and failed to order any blood tests to determine any metabolic reasons for the patient's obesity. Respondent also failed to take and note any steps she took to determine whether patient Savannah B. was abusing prescription medications, and failed to initiate and/or note she initiated an inquiry into whether the patient was diverting the drugs.

N. Patient Jonathan B.

On or about April 23, 1997, patient Jonathan B., then 11 years old, went to respondent's offices with a complaint of "watery eyes." The patient weighed 144 lbs.

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18. Ritalin hydrochloride is mild central nervous stimulant and a Schedule II controlled substance under Health and Safety Code section 11056. It is indicated for treatment of children with Attention Deficit Disorder (ADD) and Attention Deficit and Hyperactivity Disorder (ADHD).

There is no notation in the patient's chart about respondent's diagnosis for the patient, however, respondent's plan included a prescription for Tylenol ES for patient Jonathan B. Patient Jonathan B. made approximately four more visits during 1997, approximately two visits in 1998 and one visit in 2001. On or about January 3, 2003, patient Jonathan B. made another visit with complaints of "back pain, weak, Asthma." The patient weighed 254 lbs. Respondent assessment was "obesity" and "asthmatic bronchitis." Respondent's plan for the patient included a prescription for Vicodin ES and Soma. Thereafter, patient Jonathan B. made almost biweekly visits until February 2006. Patient Jonathan B.'s chief complaint during most of these visits included "back pain" and "med refill." On nearly every visit, respondent either prescribed or refilled the patient's Vicodin ES and Soma medications. During 2003, respondent prescribed approximately 800 tablets of Vicodin ES and Soma for patient Jonathan B.; during 2004, respondent prescribed approximately 600 tablets of Vicodin ES for patient Jonathan B.; and during 2005, respondent prescribed 1170 tablets of Vicodin ES for patient Jonathan B. On or about January 11, January 30 and February 10, 2006, respondent prescribed 90 tablets of Vicodin ES for patient Jonathan B. on each visit.

Respondent prescribed large amounts of controlled substances for patient Jonathan B. without obtaining and documenting a history of the patient's pain, and without performing and documenting a physical examination that would include an assessment of the patient's pain and assessment of patient's physical and psychologic functioning. Respondent also failed to establish a written treatment plan for treatment of patient Jonathan B.'s back pain, failed to obtain and note the patient Jonathan B.'s informed consent for the prolonged treatment with narcotics, failed to discuss and/or note she discussed other pain treatment modalities with the patient. In spite of the large quantity of controlled substances patient Jonathan B. was receiving, respondent failed to take and/or note any steps she took to determine whether the patient was addicted to drugs. Respondent also failed to take and note any steps she took to determine whether

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the patient was abusing prescription medications, and failed to initiate and/or note she initiated an inquiry into whether patient Jonathan B. was diverting the drugs.

Patient Steven V.

O. On or about October 9, 1998, respondent commenced providing care and treatment as a primary care physician to patient Steven V., a male infant born October 30, 1997. However, prior to respondent's initial care of Steven V. the patient had also been seen in respondent's medical practice by one or more other physicians, including Dr. N.H., dating back to on or about July 13, 1998.

Steven V.'s parents, Juan and Juana R., observed that their son's development began to regress when he was about a year and three months old, and they reported this concern to respondent during each subsequent medical visit. The patient's parents also requested authorization from respondent to see a specialist for their son, but respondent did not authorize such a referral at the time.

In late 1999, respondent finally agreed to give Steven V.'s parents authorization to see a specialist. However, when the patient's father went to respondent's office for the referral, respondent reportedly stated she could not make such a referral, that their son was fine and their insurance was a problem. Respondent advised Steven V.'s father to contact his insurance company, which he subsequently did, and was told the referral authorization needed to be done by his primary physician, which was respondent. The representative from the parents' insurance company suggested changing to a different primary care physician. During the period of treatment, respondent's medical offices, whether by respondent or Dr. N.H., the parents were repeatedly told their son was "fine" despite the parents' reports that the patient was having trouble with his feet, difficulty walking and could no longer keep his balance. The parents requested their son be given x-rays or an MRI, but were told such tests were not necessary. Instead, they were given antibiotics for Steven V.'s ear infections.

During October and November of 1999, the parents reported their son's equilibrium was getting very bad. They renewed their requests that Steven V. be given

x-rays and an MRI, but such tests were not ordered. They also renewed their requests that their son be referred to a specialist. Reportedly, respondent told the parents she did not have time to do such a referral and besides, the boy was well. According to the parents, respondent never mentioned a referral to a Regional Center for evaluation of their son's walking and balance problems and respondent never gave them a referral to such a Regional Center. The parents clearly outlined, repeatedly and with consistency to respondent, a series of progressive symptoms and signs of neuro-developmental regression starting when Steven V. was around 15 months of age. The primary concern they expressed to respondent was over the patient's gait. Both parents reported progressive problems with what they refer to as his "equilibrium." They specifically referred to him as having an increasingly unsteady, wide, and, ultimately, a "waddling" gait. This is a description of ataxia, which is a neurological finding with conditions that damage the cerebellum. This is of particular concern given the fact that Steven V. was noted to walk normally at 12 months.

In addition to their reported observations and concerns about their son's gait, the parents also reported progressive problems noticed between August 1999 and October 1999 with Steven V.'s "handling" and, ultimately, his inability to pickup toys. They also reported during this time period he was having a difficult time holding his head up, had regression of speech, and was becoming depressed and withdrawn. He also started vomiting in November 1999. Steven V.'s parents eventually took him to other physicians, including a pediatric neurologist, for evaluation of his worsening symptoms. Following appropriate tests, including a head MRI on or about March 30, 2000, Steven V. was found to have a brain tumor in the cerebellum. He was admitted to Children's Hospital of Orange County for neurosurgical evaluation and excision of the brain tumor which was completed. Steven V. did experience residual impairment as a result of this tumor and its removal.

16. Respondent is subject to disciplinary action for unprofessional conduct under section 2234, subdivision (b), in that he engaged in gross negligence with respect to the

care and treatment he provided to patients Saul R., Lorraine S., Savannah B., Jonathan B., Marilyn P., Stephen P., Elaine L., Regina B., David B., Mark S., Debbera S., Tom L., Carl G. and Steven V. in that:

Patient Saul R.

A. Paragraph 15(B) is herein realleged and incorporated by reference as though fully set forth.

B. Respondent prescribed controlled substances for this patient without obtaining and documenting any subjective or objective findings of pain.

C. Respondent prescribed controlled substances for this patient without performing a good faith prior examination and a medical indication therefor.

D. Respondent prescribed controlled substances for this patient who respondent knew or should have known was "drug seeking."

Patient Lorraine S.

E. Paragraph 15(C) is herein realleged and incorporated by reference as though fully set forth.

F. Respondent prescribed controlled substances and dangerous drugs to this patient over a prolonged period without performing and documenting a complete history and physical examination that would include an assessment of the patient's pain and assessment of the patient's physical and psychologic functioning.

G. Respondent failed to establish a written treatment plan for the patient's hepatitis C., hip and lower back pains.

H. Respondent failed to obtain and note the patient's informed consent for the prolonged treatment with narcotics, and failed to discuss and/or note he discussed other pain management modalities with the patient.

I. Respondent continued to prescribe controlled substances and other dangerous drugs to this patient in spite of the clear evidence that the patient was "diverting" the drugs she obtained from respondent.

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J. Respondent failed to perform and note periodic reviews of her treatment of the patient to determine the effectiveness and appropriateness of the large amount of controlled substances and dangerous drugs she prescribed for the patient.

Patient Carl G.

K. Paragraph 15(D) is herein realleged and incorporated by reference as though fully set forth.

L. Respondent prescribed controlled substances and dangerous drugs to this patient over a prolonged period without performing and documenting a complete history and physical examination that would include an assessment of the patient's pain and assessment of the patient's physical and psychologic functioning.

M. Respondent failed to establish a written treatment plan for the patient's left ankle pain.

N. Respondent failed to obtain and note the patient's informed consent for the prolonged treatment with narcotics, and failed to discuss and/or note he discussed other pain management modalities with the patient.

O. In spite of the of the large quantity of controlled substances the patient was receiving, respondent failed to take and/or note any steps she took to determine whether the patient was addicted to drugs.

P. Respondent also failed to take and note any steps she took to determine whether the patient was abusing prescription medications.

Q. In spite of the large amount of controlled substances and other dangerous drugs respondent prescribed for this patient, respondent failed to initiate and/or note she initiated an inquiry into whether the patient was "diverting" the drugs he obtained from respondent.

Patient Debbera S.

R. Paragraph 15(E) is herein realleged and incorporated by reference as though fully set forth.

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S. Respondent prescribed controlled substances and dangerous drugs to this patient over a prolonged period without performing and documenting a complete history and physical examination that would include an assessment of the patient's pain and assessment of the patient's physical and psychologic functioning.

T. Respondent failed to establish a written treatment plan for the patient's lower back pain.

U. Respondent failed to obtain and note the patient's informed consent for the prolonged treatment with narcotics, and failed to discuss and/or note he discussed other pain management modalities with the patient.

V. In spite of the of the large quantity of controlled substances the patient was receiving, respondent failed to take and/or note any steps she took to determine whether the patient was addicted to drugs.

W. Respondent also failed to take and note any steps she took to determine whether the patient was abusing prescription medications.

X. In spite of the large amount of controlled substances and other dangerous drugs respondent was prescribing for this patient, respondent failed to initiate and/or note she initiated an inquiry into whether the patient was "diverting" the drugs she obtained from respondent.

Patient Mark S.

Y. Paragraph 15(F) is herein realleged and incorporated by reference as though fully set forth.

Z. Respondent prescribed controlled substances and dangerous drugs to this patient over a prolonged period without performing and documenting a complete history and physical examination that would include an assessment of the patient's pain and assessment of the patient's physical and psychologic functioning.

AA. Respondent failed to establish a written treatment plan for the patient's "liver problems."

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BB. Respondent prescribed controlled substances for pain for this patient without any subjective or objective findings the patient was in pain.

CC. Respondent failed to obtain and note the patient's informed consent for the prolonged treatment with narcotics, and failed to discuss and/or note he discussed other pain management modalities with the patient.

DD. In spite of the of the large quantity of controlled substances the patient was receiving, respondent failed to take and/or note any steps she took to determine whether the patient was addicted to drugs.

EE. Respondent also failed to take and note any steps she took to determine whether the patient was abusing prescription medications.

FF. In spite of the large amount of controlled substances and other dangerous drugs respondent was prescribing for this patient, respondent failed to initiate and/or note she initiated an inquiry into whether the patient was "diverting" the drugs he obtained from respondent.

Patient Marilyn P.

GG. Paragraph 15(G) is herein realleged and incorporated by reference as though fully set forth.

HH. Respondent prescribed controlled substances and dangerous drugs to this patient over a prolonged period without performing and documenting a complete history and physical examination that would include an assessment of the patient's pain and assessment of the patient's physical and psychologic functioning.

II. Respondent failed to establish a written treatment plan for the patient's chest and lower back pains.

JJ. Respondent prescribed controlled substances for pain for this patient without any subjective or objective findings the patient was in pain.

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K. Respondent failed to obtain and note the patient's informed consent for the prolonged treatment with narcotics, and failed to discuss and/or note she discussed other pain management modalities with the patient.

LL. In spite of the of the large quantity of controlled substances the patient was receiving, respondent failed to take and/or note any steps she took to determine whether the patient was addicted to drugs.

MM. Respondent also failed to take and note any steps she took to determine whether the patient was abusing prescription medications.

NN. In spite of the large amount of controlled substances and other dangerous drugs respondent was prescribing for this patient, respondent failed to initiate and/or note she initiated an inquiry into whether the patient was "diverting" the drugs she obtained from respondent.

Patient Stephen P.

OO. Paragraph 15(H) is herein realleged and incorporated by reference as though fully set forth.

PP. Respondent prescribed controlled substances and dangerous drugs to this patient over a prolonged period without performing and documenting a complete history and physical examination that would include an assessment of the patient's pain and assessment of the patient's physical and psychologic functioning.

QQ. Respondent failed to establish a written treatment plan for the patient's leg and ankle pains.

RR. Respondent failed to obtain and note the patient's informed consent for the prolonged treatment with narcotics, and failed to discuss and/or note she discussed other pain management modalities with the patient.

SS. In spite of the of the large quantity of controlled substances the patient was receiving, respondent failed to take and/or note any steps she took to determine whether the patient was addicted to drugs.

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TT. Respondent also failed to take and note any steps she took to determine whether the patient was abusing prescription medications.

UU. In spite of the large amount of controlled substances and other dangerous drugs respondent was prescribing for this patient, respondent failed to initiate and/or note she initiated an inquiry into whether the patient was "diverting" the drugs he obtained from respondent.

Patient Regina B

VV. Paragraph 15(I) is herein realleged and incorporated by reference as though fully set forth.

WW. Respondent prescribed controlled substances and dangerous drugs to this patient over a prolonged period without performing and documenting a complete history and physical examination that would include an assessment of the patient's pain and assessment of the patient's physical and psychologic functioning.

XX. Respondent failed to establish a written treatment plan for the patient's abdominal and lower back pains.

YY. Respondent failed to obtain and note the patient's informed consent for the prolonged treatment with narcotics, and failed to discuss and/or note she discussed other pain management modalities with the patient.

ZZ. In spite of the of the large quantity of controlled substances the patient was receiving, respondent failed to take and/or note any steps she took to determine whether the patient was addicted to drugs.

AAA. Respondent also failed to take and note any steps she took to determine whether the patient was abusing prescription medications.

BBB. In spite of the large amount of controlled substances and other dangerous drugs respondent was prescribing for this patient, respondent failed to initiate and/or note she initiated an inquiry into whether the patient was "diverting" the drugs she obtained from respondent.

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Patient David B

CCC. Paragraph 15(J) is herein realleged and incorporated by reference as though fully set forth.

DDD. Respondent prescribed controlled substances and dangerous drugs to this patient over a prolonged period without performing and documenting a complete history and physical examination that would include an assessment of the patient's pain and assessment of the patient's physical and psychologic functioning.

EEE. Respondent failed to establish a written treatment plan for the patient's abdominal and lower back pains.

FFF. Respondent failed to obtain and note the patient's informed consent for the prolonged treatment with narcotics, and failed to discuss and/or note she discussed other pain management modalities with the patient.

GGG. In spite of the of the large quantity of controlled substances the patient was receiving, respondent failed to take and/or note any steps she took to determine whether the patient was addicted to drugs.

HHH. Respondent also failed to take and note any steps she took to determine whether the patient was abusing prescription medications.

III. In spite of the large amount of controlled substances and other dangerous drugs respondent was prescribing for this patient, respondent failed to initiate and/or note she initiated an inquiry into whether the patient was "diverting" the drugs he obtained from respondent.

Patient Elaine L

JJJ. Paragraph 15(K) is herein realleged and incorporated by reference as though fully set forth.

KKK. Respondent prescribed controlled substances and dangerous drugs to this patient over a prolonged period without performing and documenting a complete history and physical examination that would include an assessment of the patient's pain and assessment of the patient's physical and psychologic functioning.

LLL. Respondent failed to establish a written treatment plan for the patient's abdominal and lower back pains.

MMM. Respondent failed to obtain and note the patient's informed consent for the prolonged treatment with narcotics, and failed to discuss and/or note she discussed other pain management modalities with the patient.

NNN. In spite of the of the large quantity of controlled substances the patient was receiving, respondent failed to take and/or note any steps she took to determine whether the patient was addicted to drugs.

OOO. Respondent also failed to take and note any steps she took to determine whether the patient was abusing prescription medications.

PPP. In spite of the large amount of controlled substances and other dangerous drugs respondent was prescribing for this patient, respondent failed to initiate and/or note she initiated an inquiry into whether the patient was "diverting" the drugs she obtained from respondent.

Patient Tom L.

QQQ. Paragraph 15(L) is herein realleged and incorporated by reference as though fully set forth.

RRR. Respondent prescribed controlled substances and dangerous drugs to this patient over a prolonged period without performing and documenting a complete history and physical examination that would include an assessment of the patient's pain and assessment of the patient's physical and psychologic functioning.

SSS. Respondent failed to establish a written treatment plan for the patient's lower back pain.

TTT. Respondent failed to obtain and note the patient's informed consent for the prolonged treatment with narcotics, and failed to discuss and/or note she discussed other pain management modalities with the patient.

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UUU. In spite of the of the large quantity of controlled substances the patient was receiving, respondent failed to take and/or note any steps she took to determine whether the patient was addicted to drugs.

VVV. Respondent also failed to take and note any steps she took to determine whether the patient was abusing prescription medications.

WWW. In spite of the large amount of controlled substances and other dangerous drugs respondent was prescribing for this patient, respondent failed to initiate and/or note she initiated an inquiry into whether the patient was "diverting" the drugs he obtained from respondent.

Patient Savanna B.

XXX. Paragraph 15(M) is herein realleged and incorporated by reference as though fully set forth.

YYY. Respondent prescribed Ritalin for this patient over a long period without a documentary evidence the patient suffered from Attention Deficit and Hyperactivity Disorder (ADHD).

ZZZ. Respondent failed to elicit information of the patient's ADHD from the patients' school records and failed to obtain a psycho-social evaluation that would justify a diagnosis of ADHD.

AAAA. Respondent failed to address and/or to note she addressed the patient's morbid obesity and failed to counsel and/or to note she counseled the patient on her dietary habits and failed habits.

BBBB. Respondent failed to order any blood tests to determine any metabolic reasons for the patient's obesity.

CCCC. Respondent also failed to take and note any steps she took to determine whether the patient was abusing prescription medications.

DDDD. In spite of the large amount of controlled substances and other dangerous drugs respondent was prescribing for this patient, respondent failed to initiate

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and/or note she initiated an inquiry into whether the patient was "diverting" the drugs she obtained from respondent.

Patient Jonathan B.

EEEE. Paragraph 15(N) is herein realleged and incorporated by reference as though fully set forth.

FFFF. Respondent prescribed controlled substances and dangerous drugs to this patient over a prolonged period without performing and documenting a complete history and physical examination that would include an assessment of the patient's pain.

GGGG. Respondent failed to obtain and note the patient's informed consent for the prolonged treatment with narcotics, and failed to discuss and/or note she discussed other pain management modalities with the patient.

HHHH. In spite of the of the large quantity of controlled substances the patient was receiving, respondent failed to take and/or note any steps she took to determine whether the patient was addicted to drugs.

IIII. Respondent failed to take and note any steps she took to determine whether the patient was abusing prescription medications.

JJJJ. In spite of the large amount of controlled substances and other dangerous drugs respondent was prescribing for this patient, respondent failed to initiate and/or note she initiated an inquiry into whether the patient was "diverting" the drugs he obtained from respondent.

Steven V.

KKKK. Respondent failed to maintain adequate and accurate medical record of pediatric services she provided to patient Steven V.

LLLL. Respondent failed to refer and/or note that she referred patient Steven V. to a specialist at any time during the period of treatment.

MMMM. Respondent's failure to maintain and monitor a growth chart for patient Steven V.

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NNNN. Respondent failed to provide appropriate pediatric management for patient Steven V.

SECOND CAUSE FOR DISCIPLINARY ACTION

(Repeated Negligent Acts)

17. Respondent has further subjected her Physician's and Surgeon's Certificate No. A 50311 to disciplinary action under sections 2227 and 2234 as defined by section 2234, subdivision (c) of the Code, in that she committed repeated negligent acts in her care and treatment of patients Saul R., Lorraine S., Savannah B., Jonathan B., Marilyn P., Stephen P., Elaine L., Regina B., David B., Mark S., Debbera S., Tom L., Carl G. and Steven V. as more particularly alleged in paragraphs 1 and 16, above which are herein incorporated by reference as though fully set forth.

THIRD CAUSE FOR DISCIPLINARY ACTION

(Incompetence)

18. Respondent has further subjected her Physician's and Surgeon's Certificate No. A 50311 to disciplinary action under sections 2227 and 2234 as defined by 2234, subdivision (d) of the Code, in that she was incompetent in her care and treatment of Saul R., Lorraine S., Savannah B., Jonathan B., Marilyn P., Stephen P., Elaine L., Regina B., David B., Mark S., Debbera S., Tom L., Carl G. and Steven V. as more particularly alleged in paragraphs 15 and 16, above which are herein incorporated by reference as though fully set forth.

FOURTH CAUSE FOR DISCIPLINARY ACTION

(Failure to Maintain Adequate and Accurate Medical Records)

19. Respondent has further subjected her Physician's and Surgeon's Certificate No. A 50311 to disciplinary action under sections 2227 and 2234 as defined by 2266 of the Code, in that respondent failed maintain adequate and accurate medical records in her care and treatment of Saul R, Lorraine S., Savannah B., Jonathan B., Marilyn P., Stephen P., Elaine L., Regina B., David B., Mark S., Debbera S., Tom L., Carl G. and Steven V. as more particularly alleged in paragraphs 15 and 16, above which are herein incorporated by reference as though fully set forth.

FIFTH CAUSE FOR DISCIPLINARY ACTION

(Excessive Prescribing)

20. Respondent has further subjected her Physician's and Surgeon's Certificate No. A 50311 to disciplinary action under sections 2227 and 2234 as defined by section 725 of the Code in that respondent prescribed excessive amounts of controlled substances and dangerous drugs to patients Saul R., Lorraine S., Savannah B., Jonathan B., Marilyn P., Stephen P., Elaine L., Regina B., David B., Mark S., Debbera S., Tom L. and Carl G. as more particularly alleged in paragraphs 15 and 16, above which are herein incorporated by reference as though fully set forth.

SIXTH CAUSE FOR DISCIPLINARY ACTION

(Prescribing in Violation of Drug Federal and State Statutes)

21. Respondent has further subjected her Physician's and Surgeon's Certificate No. A 50311 to disciplinary action under sections 2227 and 2234 as defined by section 2238 of the Code in that in her treatment and care of patients Saul R., Lorraine S., Savannah B., Jonathan B., Marilyn P., Stephen P., Elaine L., Regina B., David B., Mark S., Debbera S., Tom L. and Carl G., respondent prescribed controlled substances and dangerous drugs in violation of in violation of federal and state statutes and regulations as more particularly alleged in paragraphs 15 and 16, above which are herein incorporated by reference as though fully set forth.

SEVENTH CAUSE FOR DISCIPLINARY ACTION

(Prescribing in Violation of Drug Federal and State Statutes)

22. Respondent has further subjected her Physician's and Surgeon's Certificate No. A 50311 to disciplinary action under sections 2227 and 2234 as defined by section 2241 of the Code in that in her treatment and care of patients Saul R., Lorraine S., Savannah B., Jonathan B., Marilyn P., Stephen P., Elaine L., Regina B., David B., Mark S., Debbera S., Tom L. and Carl G., respondent prescribed controlled substances or dangerous drugs to an addict or habitue as more particularly alleged in paragraphs 12 and 13, above which are herein incorporated by reference as though fully set forth.

EIGHTH CAUSE FOR DISCIPLINARY ACTION

(Prescribing Controlled Substance Without Good Faith)

23. Respondent has further subjected her Physician's and Surgeon's Certificate No. A 50311 to disciplinary action under sections 2227 and 2234 as defined by section 2242, subdivision (a) of the Code in that in her treatment and care of patients Saul R., Lorraine S., Savannah B., Jonathan B., Marilyn P., Stephen P., Elaine L., Regina B., David B., Mark S., Debbera S., Tom L. and Carl G., respondent prescribed controlled substances or dangerous drugs without an appropriate prior examination and medical indication therefor as more particularly alleged in paragraphs 15 and 16, above which are herein incorporated by reference as though fully set forth.

NINTH CAUSE FOR DISCIPLINARY ACTION

(Conviction of an Offense Substantially Related to the Practice Medicine)

24. Respondent has further subjected her Physician's and Surgeon's Certificate No. A 50311 to disciplinary action for unprofessional conduct under sections 2227 and 2234, as defined by section 2236 of the Code, in that respondent was a convicted of an offense substantially related to the qualifications, functions, and duties of a physician and surgeon. The circumstances are as follows:

On or about February 2, 2007, in the Superior Court of California, County of Orange, in the case of *The People of the State of California v. Heidi Ann Winkler,* Case No. VA 96682, respondent was convicted, on her own guilty plea, of one count of issuing an illegal prescription in violation of Health and Safety Code section 11153 (Count 1 of the criminal complaint). In exchange for the plea, the District Attorney dismissed Counts 2 through 6 of the criminal complaint against respondent. As a consequence of the guilty plea, respondent was sentenced to three (3) years formal probation with conditions that included an order to spend one day in county jail and an order to pay fines. The circumstances leading to the filing of the six-count criminal complaint against respondent are as stated in paragraph 15(B), above.

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TENTH CAUSE FOR DISCIPLINARY ACTION

(Conviction of Violating State Statute Regulating Controlled Substances and Dangerous Drugs)

25. Respondent has further subjected her Physician's and Surgeon's Certificate No. A 50311 to disciplinary action for unprofessional conduct under sections 2227 and 2234, as defined by section 2237 of the Code, in that respondent was a convicted of violating a state statute, to wit, Health and Safety Code section 11153, regulating controlled substances and dangerous drugs, as more particularly alleged in paragraph 24, above.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged herein, and that following the hearing, the Division of Medical Quality, Medical Board of California, issue its Decision and Order:

1. Revoking or suspending Physician's and Surgeon's Certificate No. A 50311, heretofore issued by the Board to Heidi Ann Winkler, M.D.;

2. Revoking, suspending or denying respondent's approval authority to supervise physician's assistants pursuant to Code section 3527;

3. Ordering respondent to pay the Board the costs of probation monitoring if placed on probation; and

4. Taking such other and further action as the Board deems necessary and proper.

DATED: August 1, 2007.

DAVID T. THORNTON
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

Winkler-2d AmAcc.